

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA (Rural
Development),

Plaintiff

v.

JOHN DOE and RICHARD DOE as
those unknown persons who may be
holders of the lost mortgage
note or have any interest in the
proceeding,

Defendants

CIVIL NO. 09-1967 (JP)

DEFAULT JUDGMENT

The Court has before it Plaintiff's motion for default judgment (No. 7) against Defendants. The motion is **GRANTED**. Upon Plaintiff's motion for judgment, and it appearing from the records of the above-entitled case that default was entered by the Clerk of this Court against Defendants on February 18, 2010 (No. 8) for their failure to plead or file an answer to the complaint or otherwise appear in the above cause, Plaintiff is entitled to a judgment by default.

Defendants in the instant case were duly served by publication pursuant to the Order of this Court and notice was published in the newspaper on December 9, 16, 23, and 30, 2009, and on January 6 and 13, 2010, per the verified statement filed with the Clerk of this Court.

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The Court finds that the requirements of Rule 4 of the Rules of Civil Procedure of Puerto Rico and Article 82 of the Mortgage Law have been met. Pursuant to 28 U.S.C. § 1655, Defendants were ordered to appear and answer the complaint. Since the Defendants have not appeared, the Court makes the following findings of facts and conclusions of law.

I. FINDINGS OF FACT

1. On or before September 26, 1978, Antonio Núñez-González and María A. Nieves-Morales, received from the United States of America, acting through the United States Department of Agriculture, Rural Development a loan in the amount of \$25,480.00 on the property described at paragraph 3 below.

2. In evidence of the money lent by Plaintiff United States of America, Antonio Núñez-González and María A. Nieves-Morales executed a promissory note dated September 26, 1978 in the amount of \$25,480.00 at 8.5% interest rate, payable to the United States Department of Agriculture, Rural Development.

3. To secure the payment of said promissory note, Antonio Núñez-González and María A. Nieves-Morales executed a First Mortgage in favor of the Plaintiff United States of America, on September 26, 1978, by First Mortgage Deed No. 85 before Notary Public J. Bauzá-Agrisoni, over the following described property described in the Spanish language as:

RÚSTICA: Solar Núm. 3 del plano de inscripción. Predio de terreno radicado en el BARRIO GALATEO del término

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municipal de Toa Alta, Puerto Rico, con una área superficial de 865.1608 metros cuadrados equivalentes a 0.2201 cuerda. En lindes por el Norte, en 16.00 metros, con una parcela de terreno dedicada a uso público; por el Sur, en 27.438 metros, con terrenos propiedad de la Autoridad de Tierras; por el Este, en 49.905 metros, con el solar maraco con el Núm. 4; y por el Oeste, en 37.463 metros, con el solar maraco con el Núm. 2.

4. The first mortgage deed executed in favor of the Plaintiff was duly recorded in the Registry of Property of Bayamón III at page 97, volume 154 of Toa Alta, property number 8486, 1st inscription, where said mortgage appears in full force and effect.

5. The original promissory note of \$25,480.00 dated September 26, 1978, while in possession and under the custody of Rural Development, was lost, misplaced or destroyed.

6. The indebtedness assumed by Antonio Núñez-González and María A. Nieves-Morales, to the Plaintiff United States of America has been paid in full.

II. CONCLUSIONS OF LAW

Articles 132 and 134 of the Mortgage Law, provides that when a mortgage note has been lost, the mortgage may be canceled by the Registrar of Property only by judicial decree obtained by a court of competent jurisdiction in a civil proceeding such as authorized by the Code of Civil Procedure of Puerto Rico, in which the court decrees that the mortgage obligation is extinguished. P.R. Laws Tit. 30 §§ 2456 and 2458.

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THE COURT HEREBY ORDERS:

1. The Court enters Judgment against the Defendants herein declaring that the aforementioned mortgage obligation is extinguished.

2. The promissory note in the amount of \$25,480.00, on the unpaid balance executed by Antonio Núñez-González and María A. Nieves-Morales on September 26, 1978, the possession of whomsoever it may now be or become in the future, is hereby declared null and void, and therefore canceled.

3. The Registrar of the Property of Bayamón III, Puerto Rico, shall cancel and nullify the real estate voluntary mortgage executed by Antonio Núñez-González and María A. Nieves-Morales, to secure the payment of the promissory note above described constituted by the terms of Voluntary Mortgage Deed No. 85 executed before Notary Public J. Bauzá-Agrisoni on September 26, 1978, and which was recorded in the Registry of Property of Bayamón III, Puerto Rico, at page 97, volume 154 of Toa Alta, property number 8486, 1st inscription.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 18th day of February, 2010.

s/Jaime Pieras, Jr.
JAIME PIERAS, JR.
U.S. SENIOR DISTRICT JUDGE